STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 27, 2011
v	No. 300310 Saginaw Circuit Court
RANDALL FREDERICK ARNDT, Defendant-Appellant.	LC No. 09-032497-FH

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of operating a motor vehicle while intoxicated, third offense. MCL 257.625(1) and (9)(c). We affirm.

On February 17, 2009, at about 2:45 a.m., defendant was the subject of a traffic stop after he was seen driving 15 mph under the posted speed limit and continually drifting back and forth in his lane of travel. After he stopped, defendant opened his driver's side door and the officer smelled intoxicants. Defendant's eyes were watery and bloodshot. His speech was slurred. Prior to conducting field sobriety tests, the officer asked if defendant had any medical conditions that he should be made aware of and whether defendant had taken any prescribed medications or street drugs in the past eight hours. Defendant only indicated that he had a back injury. Thereafter, field sobriety tests were conducted, but none involving balance or walking. Defendant could not pay attention or focus well enough to perform the horizontal gaze test. After defendant failed to properly recite the alphabet and a counting sequence, he was placed under arrest. Defendant was then read his chemical test rights while seated in the patrol vehicle. Defendant was asked to submit to a blood test, and he was agreeable and consented to the test. The test was completed and defendant's blood alcohol level was determined to be 0.31 grams per 100 milliliters of blood. During the booking procedure at the Saginaw County Jail defendant was asked if he had any medical conditions and he replied that he did not.

Prior to trial defendant moved, in part, to suppress the results of the chemical blood test on the ground that his Fourth Amendment rights were violated because the arresting officer failed to inform him that the implied consent statute concerning blood draws did not apply to him—a diabetic. See MCL 257.625c(2). The trial court denied the motion to suppress, holding that "the violation of the implied consent statute on the basis that Defendant now claims to be a diabetic does not warrant suppression of the blood test." Further, the court noted, the

exclusionary rule does not apply but, even if it did, "it is subject to the good faith exception because the police in this case . . . did not know and had no reason to know the Defendant was diabetic." The court concluded that the police conduct was not unreasonable—the officer merely relied on defendant's statement about his physical and medical condition—and there was no deterrent value to suppressing the evidence. This appeal followed.

Defendant first argues that, pursuant to *People v Hyde*, 285 Mich App 428; 775 NW2d 833 (2009), his motion to suppress the results of his blood test should have been granted. We disagree. This Court reviews a trial court's findings of fact in a suppression hearing for clear error, and reviews the ultimate decision de novo. *Id*. at 436.

MCL 257.625c, the implied consent statute, reads in part:

> (1) A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood or urine or the amount of alcohol in his or her breath in all of the following circumstances:
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> (a) If the person is arrested for a violation of section 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5), or section 625m or a local ordinance substantially corresponding to section 625(1), (3), (6), or (8), section 625a(5), or section 625m.
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> * * *
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> (2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician is not considered to have given consent to the withdrawal of blood.

Thus, generally, MCL 257.625c(1) provides that consent to certain chemical tests is implied by a person who is arrested operating a vehicle while under the influence. See *People v Borchard-Ruhland*, 460 Mich 278, 285; 597 NW2d 1 (1999). Neither written consent nor a search warrant is required before these chemical tests may be performed and the results are admissible pursuant to the implied consent statute. See MCL 257.625a(6)(a); *People v Campbell*, 236 Mich App 490, 494; 601 NW2d 114 (1999). However, an arrestee can withdraw consent by refusing the offered chemical test, and then a blood test may only be performed by court order. See MCL 257.625d(1); *People v Callon*, 256 Mich App 312, 322-323; 662 NW2d 501 (2003).

In this case, defendant contends that, although he did not refuse a blood test upon his arrest, pursuant to MCL 257.625c(2), he cannot be considered to have given consent to the blood test either because he has diabetes. Defendant relies on *Hyde*, 285 Mich App at 428, in support of his claim that the trial court should have suppressed the results of the blood test. However, in *Hyde*, the arresting officer knew that the defendant was a diabetic because the defendant told him he was a diabetic, but the officer was unaware of the diabetes exception to the implied consent statute. *Id*. at 432, 441. Therefore, the officer informed Hyde of the consequences of refusing

the blood test, but not of the diabetic exception which prevented Hyde from making an informed decision. *Id*. at 441.

Here, defendant did not advise the arresting officer that he was a diabetic, although defendant was asked whether he had any medical conditions and whether he was taking any prescribed medication. In fact, defendant was not only asked at the scene of the arrest, but also during the booking process whether he had any medical conditions and neither time did he disclose his diabetes. At the evidentiary hearing defendant admitted that he never advised the arresting officer that he had diabetes or that he was prescribed medication. Thus, the arresting officer did not know that defendant was a diabetic; accordingly, he had no reason to advise defendant that the implied consent statute did not apply to him. Unlike in the case of *Hyde*, the arresting officer here did not prevent defendant from making an informed decision. Therefore, we reject defendant's argument that the trial court should have "followed the binding precedent of [*Hyde*] and suppressed the blood test results." The case is clearly distinguishable.

Next, defendant argues that the confrontation clause was violated when the forensic scientist testified that the blood she tested was defendant's because the lab technician who labeled the vial of blood did not testify. After de novo review of this constitutional issue, we disagree. See *People v Idziak*, 484 Mich 549, 554; 773 NW2d 616 (2009).

It appears that defendant is arguing that the technician who received and cataloged the blood sample could have made a mistake; thus, the forensic scientist should not have been permitted to testify that the blood she analyzed was defendant's blood. Defendant relies on *Melendez-Diaz v Massachusetts*, __ US __; 129 S Ct 2527; 174 L Ed 2d 314 (2009) in support of his argument. However, that case is clearly inapposite and held that sworn certificates from state laboratory analysts were testimonial statements and could not be introduced at trial without testimony from the analyst. More importantly, the *Melendez-Diaz* Court noted that it was not holding that "everyone who laid hands on the evidence must be called." *Id*. at 2532 n 1. Thus, defendant has failed to establish a confrontation clause violation. And defendant's claim that the admission of the blood test results constituted reversible error is likewise without merit.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter